



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Frances M. Rosarius

File: B-265606

Date: July 2, 1996

DIGEST

A transferred employee, who also was a licensed real estate agent employed by a real estate firm, contracted with the firm to have it list and sell her residence at the old duty station and to pay the firm a 6 percent real estate commission. In addition, the firm, by separate agreement, arranged to have the employee handle the residence sale on its behalf. Following the sale of the residence, the employee and her husband were charged and paid the 6 percent commission to the firm, which in turn compensated the employee for her sales services. Her claim for reimbursement for the commission paid was reduced by the amount of the fee paid her by the firm. She appeals that ruling. Under applicable laws of the jurisdiction involved, the legal relationship between the parties regarding the commission paid for the sale of the residence, on one hand, and the relationship between the employee and the firm regarding payment of compensation for her performing the sales services, are separately enforceable. Therefore, since the employee incurred a legally enforceable debt, the full 6 percent real estate commission may be reimbursed to her.

DECISION

This decision responds to correspondence from Ms. Frances M. Rosarius, who is appealing Claims Settlement Z-2869355, Nov. 7, 1994. That settlement disallowed that part of the brokers' commission paid the real estate firm that was equal to the amount she received from the firm as the sales agent for selling her own residence incident to a permanent change of station in May 1994. We conclude that the full real estate brokers' commission paid the real estate firm may be reimbursed, for the following reasons.

BACKGROUND

Ms. Rosarius, an employee of the Department of the Army stationed at Tooele Army Depot, Utah, was transferred to the Corpus Christi Army Depot, Texas, by travel orders dated April 18, 1994. She reported for duty at her new station on May 31, 1994. In addition to her federal employment, Ms. Rosarius also held a license as a real estate agent and was employed by Wardley Better Homes and Gardens

(Wardley), a real estate firm in the Tooele Depot area. The file shows that she and her spouse contracted with Wardley to sell their residence, with Ms. Rosarius to act as the selling agent for Wardley.

The employee and her husband sold their residence and went to settlement on May 19, 1994. As the sellers, they were charged and paid Wardley a 6 percent real estate commission (\$4,920) on the sale. The Army disallowed reimbursement of that amount due to the uncertainty regarding Ms. Rosarius's status as the employee/seller of the residence and as agent on the sale. On appeal here, we ruled in settlement Z-2869355, Nov. 7, 1994, that she was entitled to be reimbursed for that part of the commission paid Wardley that was in excess of the fee that she received from Wardley as the selling agent. Ms. Rosarius appeals that settlement and seeks reimbursement for the full commission she and her husband paid to Wardley.

OPINION

The authority for the reimbursement of real estate expenses is contained in 5 U.S.C. § 5724a(a)(4)(A) (1996), and Part 302-6 of the Federal Travel Regulation (FTR).¹ Section 302-6.2(a) of the FTR provides that the brokers' fee or real estate commission paid by an employee for services in selling his/her residence at the old duty station is reimbursable, but not in excess of rates generally charged in the locality of the old official station.²

In interpreting the statute and the regulation, we have held that a brokers' commission may be reimbursed only where the employee has incurred a legally enforceable obligation to do so.³ We look to state law to determine whether the payment obligation claimed by the employee is legally enforceable.⁴

Under Utah law, an individual who is employed as a sales agent, or engaged as an independent contractor, to perform any real estate services for another must be

¹41 C.F.R. Part 302-6 (1995).

²See also paragraph C14002 of Volume 2, Joint Travel Regulations.

³Paul A. Pradia, B-219501, Jan. 13, 1986, and decisions cited. See also A.F. Madayag, B-217514, Nov. 25, 1985.

⁴Patricia A. Wales, 61 Comp. Gen. 96 (1981).

licensed⁵ and must be affiliated with a principal real estate broker,⁶ who also must be licensed.⁷ It is also unlawful for a sales agent to accept a fee for services performed from any person other than the principal broker with whom he/she is affiliated.⁸ Further, only principal brokers, not sales agents, may bring an action to recover a commission, fee, or compensation for real estate services performed by representatives of the firm for another.⁹

Two separate legal relationships are involved in this real estate transaction, each with different obligations and benefits. The legal relationship between Mr. and Mrs. Rosarius, as residence owners, and Wardley, as the principal broker for the sale of the residence, is independent from the legal relationship between Wardley, as principal broker, and Ms. Rosarius, as its sales agent. Under the listing agreement, the sellers agreed to pay Wardley a real estate commission if it was sold during the period of the listing. Since the residence was sold during that listing period, they became legally obligated to pay the real estate commission to Wardley. Under a separate agreement, Wardley agreed to pay Ms. Rosarius a fee as its sales agent for her services in selling the residence.

We have held that the fact that an employee's spouse, who was a licensed real estate agent and actually performed services for the real estate firm in selling the residence, received a fee from her employing real estate firm for those services, would not preclude reimbursement for the full commission expenses required to be paid by the employee to the real estate firm.¹⁰ We also have permitted reimbursement of the brokers' commission paid to the mother of the employee for her services in selling the employee's residence, because she was a licensed real estate broker.¹¹

⁵Utah Code Ann. § 61-2-4 (1993).

⁶Utah Code Ann. § 61-2-8 (1993).

⁷Utah Code Ann. § 61-2-1 (1993).

⁸Utah Code Ann. § 61-2-10 (1993).

⁹Utah Code Ann. § 61-2-18 (1993).

¹⁰Hans C. Pedersen, B-239886, Nov. 9, 1990, citing to Robert J. Mihalovic, B-193201, June 19, 1979.

¹¹W. Jerry Goudelocke, B-189375, Oct. 12, 1977.

In the present situation, Mr. and Mrs. Rosarius were under a legal obligation to pay Wardley a 6 percent commission for the sale of their residence. The fact that the employee also was a licensed sales representative for Wardley and performed the required services through Wardley as a licensed real estate agent does not preclude reimbursement for the full commission paid to Wardley for the sale of their residence. Therefore, Mr. and Mrs. Rosarius may be reimbursed that additional amount.

Robert P. Murphy
General Counsel